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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/634,227

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Don E. Juliano

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06/16/2006

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EXAMINER

LHYMN, EUGENE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,227

Applicant(s)

JULIANO ET AL.

Examiner

Eugene Lhymn

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-19, 21-24 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-19, 21-24 and 28-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 34, 35, 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krupa (US 5456379) in view of Merzweiler (US 3986299). With respect to claim 1, Krupa discloses the following:

- A lower tray portion (Fig. 1 below)
- An upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion (Fig. 1 below)
- One or more standoffs positioned between the lower tray portion and the upper lid portion to maintain a desired displacement between the a top surface of the upper lid portion and a bottom extremity of the lower tray portion, wherein each of the one or more standoffs providing a coupling adapted to minimize movement of the upper lid portion relative to the lower tray portion (Fig. 1 below)

However, Krupa fails to disclose the coupling between the standoff members being a snap coupling. Nonetheless, Merzweiler teaches a container having a configuration of standoffs wherein said standoffs are interfaced via snap couplings (Fig. 4, & Col 2,

Lines 30-35), wherein a snap coupling provides a secure interface. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the standoff couplings of Krupa to snap as taught by Merzweiler so as to provide a secure interface.

With respect to claim 2, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Krupa which is capable of being used in the intended manner, i.e., the lower tray portion being adapted to at least partially enclose objects positioned therein. There is no structure in Krupa which would prohibit such functional intended use (see MPEP 2111).

With respect to claim 3, Krupa discloses one of more standoffs comprising a first and second member (Fig. 1 below).

With respect to claim 4, Krupa discloses the first member of the standoff being coupled to the upper lid portion (Fig. 1 below).

With respect to claim 5, Krupa discloses the second member of the standoff being coupled to the lower tray portion (Fig. 1 below).

With respect to claim 6, Krupa discloses the first member being adapted to be coupled to the second member to provide a frictional coupling.

With respect to claim 34, Krupa discloses a first and second row arranged on the lower tray portion, said first row and second row being separated, and the at least one standoff being positioned between said first and second row (Fig. 1 below).

With respect to claim 8, Krupa discloses the standoff's first and second members having lateral surfaces (Fig. 1 below).

With respect to claim 9, Krupa, as modified above by Merzweiler (claim 1), discloses the following:

- A lower tray portion, the lower tray portion being configured to at least partially enclose objects positioned therein (Fig. 1 below)
- An upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion (Fig. 1 below)
- One or more standoffs positioned between the lower tray portion and the upper lid portion to maintain a desired displacement between the a top surface of the upper lid portion and a bottom extremity of the lower tray portion, each of the one or more standoffs comprising a first and second member which providing a snap-coupling (Fig. 1 below)

With respect to claim 10, Krupa discloses the lower tray portion including a plurality of enclosure rows, as shown in Fig. 1.

With respect to claim 11, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Krupa which is capable of being used in the intended manner, i.e., the lower tray portion being adapted to hold

cookies. There is no structure in Krupa which would prohibit such functional intended use (see MPEP 2111).

With respect to claim 12, Krupa discloses the lower tray portion including three enclosure rows.

With respect to claim 13, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Krupa which is capable of being used in the intended manner, i.e., the rows being adapted to hold 8 cookies each. There is no structure in Krupa which would prohibit such functional intended use (see MPEP 2111).

With respect to claim 14, Krupa discloses the first member of the standoff having an annular ridge and insertion neck (Fig. 1 below).

With respect to claim 15, Krupa discloses the second member of the standoff including a securement void (Fig. 1 below).

With respect to claim 16, Krupa discloses at least a portion of the annular ridge and insertion neck being positioned in the securement void.

With respect to claim 33, Krupa, as modified by Merzweiler, discloses the following:

- a lower tray portion, the lower tray portion being configured to at least partially enclose objects positioned therein;

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- an upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion;
- one or more standoffs positioned between the lower tray portion and the upper lid portion to maintain a desired displacement between the a top surface of the upper lid portion and a bottom extremity of the lower tray portion, wherein each of the one or more standoffs comprise a first and second member which providing a snap-coupling adapted to minimize lateral movement of the upper lid portion relative to the lower tray portion while preventing inadvertent separation of the upper lid portion from the lower tray portion;
- a multi-angle seal adapted to facilitate the secure coupling of the upper lid portion and the lower tray portion, the multi-angle seal being formed from at least a portion of the perimeter of the upper lid portion and at least a portion of the perimeter of the lower tray portion, wherein at least one angle of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced together, at least one angle of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one angle of the multi-angle seal provides resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another, wherein Fig.'s 1, 4, and 5 show the interface and structure of the multi-angle seal, items 52, 48, 116, 132, wherein the inherent frictional interface of the multi-angle seal meets the

aforementioned limitations wherein the frictional interface will provide resistance when the container is closed and opened, and the perimeter shoulders provide resistance to lateral movement.

With respect to claim 35, Krupa discloses the first and second row being arranged on the lower tray portion, said first and second row being separated, the second member of the standoff being arranged between the first and second rows (See Fig.1 below).

3. Claims 17-19, 21-24, 28-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Krupa in view of Tucker (US 6910599 B2). With respect to claims 17 & 24, Krupa discloses a multi-angle seal with a first and second member (mating surfaces of the lid and container periphery) but fails to disclose at least one of the first and second members having the following:

- A first transverse compression sealing surface
- A first perpendicular surface positioned adjacent to the first transverse compression sealing surface
- A transverse tension sealing surface adjacent the first perpendicular surface
- A second perpendicular surface positioned adjacent the transverse tension sealing surface
- A second transverse compression sealing surface adjacent the second perpendicular
- A top surface adjacent the second transverse compression

- A third transverse sealing surface

Nonetheless, Tucker teaches a similar container having a multi-seal angle, having the following:

- A first transverse compression sealing surface (Fig. 2 below)
- A first perpendicular surface positioned adjacent to the first transverse compression sealing surface(Fig. 2 below)
- A transverse tension sealing surface adjacent the first perpendicular surface(Fig. 2 below)
- A second perpendicular surface positioned adjacent the transverse tension sealing surface(Fig. 2 below)
- A second transverse compression sealing surface adjacent the second perpendicular (Fig. 2 below)
- A top surface adjacent the second transverse compression
- A third transverse sealing surface(Fig. 2 below)

Having such a configuration for the container-lid interface provides an alternate and functionally equivalent means for maintaining the container in a closed position.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the seal of Krupa with the seal as taught by Tucker so as to provide an alternate means of maintaining the container in a closed position.

With respect to claim 18, Krupa discloses the multi-angle seal being formed from at least a portion of the perimeter of the upper lid portion (Fig. 1, items 116 & 118).

With respect to claim 19, Krupa discloses the multi-angle seal being formed from at least a portion of the perimeter of the lower tray portion (Fig. 1, items 52 & 48).

With respect to claim 21, Krupa discloses the first and second member cooperatively interacting (Fig. 4).

With respect to claim 22, Krupa discloses the first member (items 52 & 48) including at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced together, at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one surface of the multi-angle seal providing resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another, wherein Fig.'s 1, 4, and 5 show the interface and structure of the multi-angle seal, items 52, 48, 116, 132, wherein the inherent frictional interface of the multi-angle seal meets the aforementioned limitations.

With respect to claim 23, Krupa discloses the second member (items 116 & 132) including at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced together, at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one surface of the multi-angle seal providing resistive force to minimize lateral movement of the lower

tray portion and the upper lid portion relative to one another, wherein Fig.'s 1, 4, and 5 show the interface and structure of the multi-angle seal, items 52, 48, 116, 132, wherein the inherent frictional interface of the multi-angle seal meets the aforementioned limitations wherein the frictional interface will provide resistance when the container is closed and opened, and the perimeter shoulders provide resistance to lateral movement.

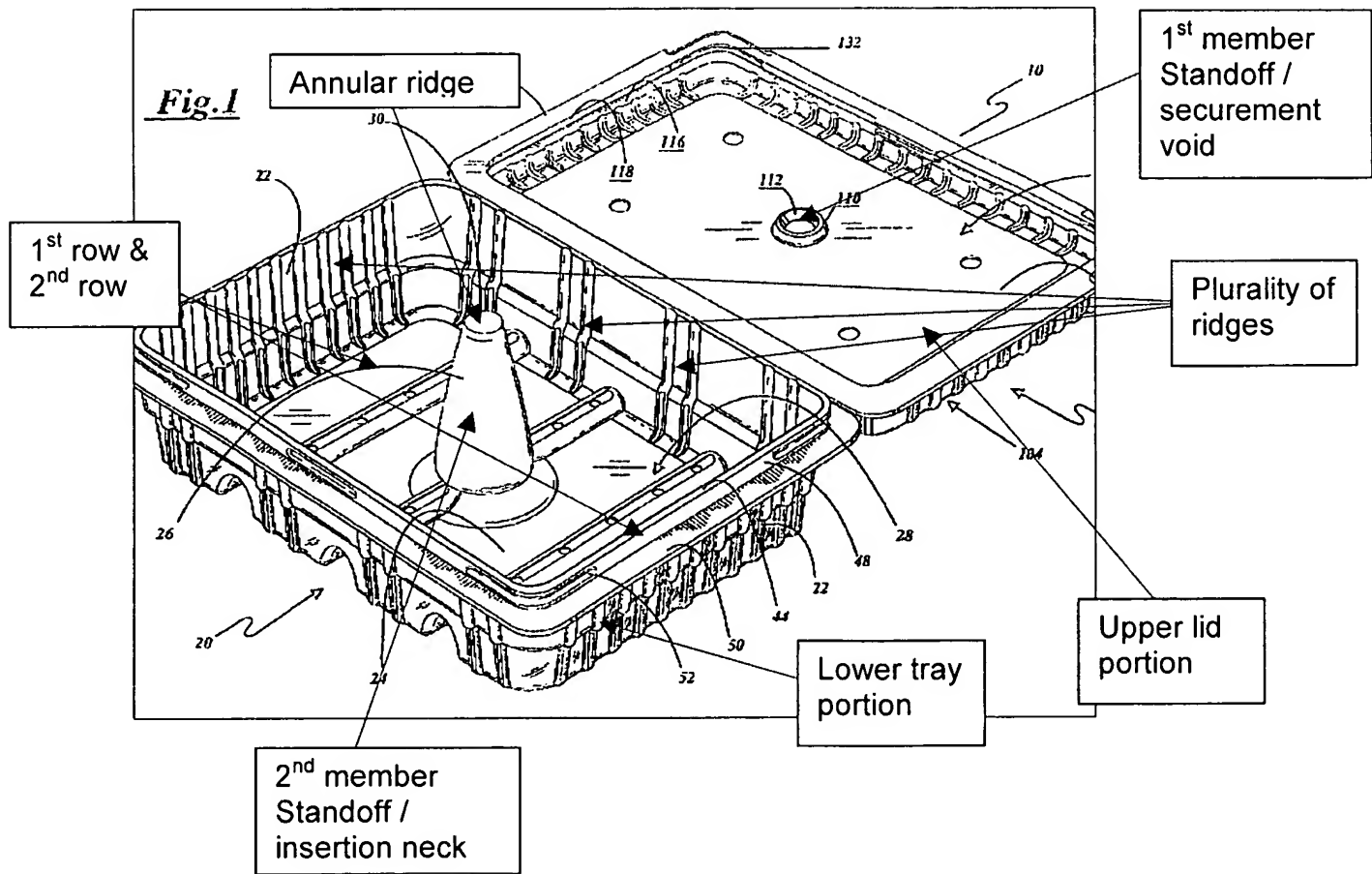
With respect to claim 28, Krupa, as modified above by Tucker, discloses the compression sealing surface of the first member engaging the compression sealing surface of the second member, the tension sealing surface of the first member engaging the tension sealing surface of the second member, and the lateral sealing surface of the first member engaging the lateral sealing surface of the second member, as shown in Fig. 2 below.

With respect to claim 29, Krupa, as modified above by Tucker, discloses wherein one or more of the sealing surfaces of the first and second member comprise transverse surfaces that provide a combination of resistance to lateral forces and either compressive forces or tensile forces (Fig. 2 below).

With respect to claim 30, Krupa, as modified above by Tucker, discloses the first member including a first transverse compression surface, a first perpendicular surface, a transverse tension, a second perpendicular, a second transverse compression, a top, and a third sealing surface (Fig. 2 below).

With respect to claim 31, Krupa, as modified above by Tucker, discloses the same structure as recited in claim 30, but the structure being on a second member (See Fig. 2 below).

4. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krupa in view of Tucker as applied to claim 17 above, and further in view of DeMars (US 5409126). With respect to claim 32, Krupa as modified above discloses the claimed invention except for the molded container providing an airtight seal. However, DeMars teaches a similar plastic container having an airtight seal (Col. 3, Line16), thereby providing a reliable seal. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the seal of Krupa as modified by Tucker to be airtight as taught by DeMars so as to provide a reliable seal.



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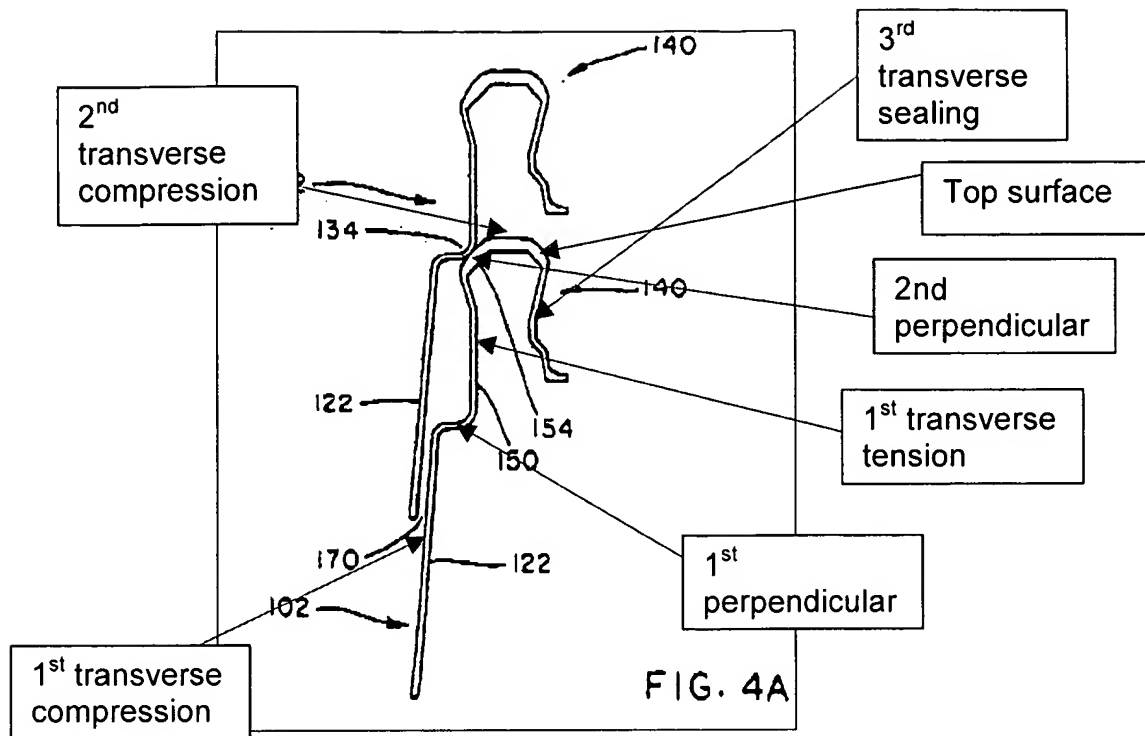


Fig. 2

Response to Arguments

5. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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SUPERVISORY PATENT EXAMINER